

COPY

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Richard J. Hughes Justice Complex  
25 Market Street  
PO Box 093  
Trenton, NJ 08625-0093  
Attorney for Plaintiffs

FILED

AUG 12 2013

PETER F. BARISO, JR., A.J.S.C.

By: Louis G. Karagias  
Deputy Attorney General  
(609) 984-4863

	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - HUDSON COUNTY DOCKET NO. L-611-03
--	---

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, et al.,  Plaintiffs,  v.  SYNCON RESINS, INC., et al., Defendants.	<u>Civil Action</u>  CONSENT JUDGMENT
--	---

This matter was opened to the Court by John J. Hoffman, Acting Attorney General of New Jersey, Louis G. Karagias and A. Paul Stofa, Deputy Attorneys General appearing, as attorney for Plaintiffs New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund, and Bressler, Amery & Ross, P.C., David P. Schneider, Esq., appearing, as attorney for defendant Benjamin Farber; and the parties having amicably resolved their dispute before trial:

## I. BACKGROUND

1. Plaintiffs New Jersey Department of Environmental Protection ("DEP"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "the Plaintiffs") initiated this action on January 31, 2003, by filing a complaint (the "Complaint") against defendant Benjamin Farber (the "Settling Defendant"), Farnow, Inc., ("Farnow"), Syncon Resins, Inc. ("Syncon") and others, pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 ("the Spill Act").

2. Plaintiffs in their complaint seek reimbursement of the costs they have incurred, and will incur, to remediate the Site, and Natural Resource Damages for any natural resource of this State that has been, or may be, injured as a result of the Discharge of Hazardous Substances at the Property located in Kearny, Hudson County, New Jersey.

3. Plaintiffs allege that at the time of Discharges of Hazardous Substances at the Property, the Settling Defendant owned a portion of the Property (Lot 12) and Farnow, of which the Settling Defendant was President and the majority shareholder, owned the remainder of the Property (Lots 13 and 13R). From November 10, 1961 through December 21, 1972, the Settling Defendant leased Lot 12 to Farnow. During this time period on Lot 12, Farnow engaged in the manufacturing of varnishes, alkyds, and latexes for paints. Commencing on October 2, 1967, Farnow owned and leased Lots 13 and 13R to various entities through December 1972. After all of the outstanding stock of Farnow was purchased by Syncon on December 21, 1972, Syncon continued to operate at the Property. Later, Syncon voluntarily filed for bankruptcy under the United States Bankruptcy Code and, in 1996, the bankruptcy case was closed.

4. The American Home Assurance Company ("American Home"), the Allstate Insurance Company, Fireman's Fund Insurance Company, The American Insurance Company,

The Travelers Indemnity Company, and St. Paul Fire and Marine Insurance Company (collectively, "the Insurers") issued or allegedly issued various liability insurance policies which name or allegedly name the Settling Defendant, Farnow and/or Syncon as named insureds, insureds or additional insureds.

5. In response to Plaintiffs' complaint, the Settling Defendant filed a responsive pleading in which he denied liability, and asserted various defenses to the allegations contained in the Complaint. Further, the Settling Defendant has tendered Plaintiffs' claims to the Insurers, which have reserved rights and/or denied insurance coverage for some or all of the claims asserted by Plaintiffs.

6. By entering into this Consent Judgment, the Settling Defendant does not admit any liability on his part arising from the transactions or occurrences the Plaintiffs allege in the Complaint nor does he admit the accuracy of any such allegations. The Settling Defendant also agrees that the Insurers have not admitted that insurance coverage exists in his favor under any policy of insurance with respect to the claims asserted by the Plaintiffs.

7. Plaintiffs allege, and the Settling Defendant denies, that "Hazardous Substances," as defined in N.J.S.A. 58:10-23.11b., were "Discharged" at the Property within the meaning of N.J.S.A. 58:10-23.11b., which substances the Plaintiffs allege, and the Settling Defendant denies, he discharged, or was in any way responsible for.

8. From 1982 through the date hereof, the United States Environmental Protection Agency and the Plaintiff performed remedial investigations and response actions pursuant to state and federal laws, to determine the nature and extent of the contamination at the Site.

9. The Settling Defendant previously resolved his alleged liability to the United States for "response costs" by way of a Consent Decree filed in January 1997, which the United

States and the Settling Defendant entered into under the authority of CERCLA, 42 U.S.C. § 9601 et seq., and received a covenant not to sue and contribution protection under CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

10. Sampling results from the remedial investigations revealed the presence of various Hazardous Substances in the soils and ground water at the Site.

11. Plaintiffs have alleged that they have incurred and will continue to incur costs, and Natural Resource Damages including lost value and reasonable assessment costs, for any natural resource as defined in N.J.S.A. 58:10-23.11b of this State that has been, or may be, injured as a result of the Discharge of Hazardous Substances at the Property.

12. The Plaintiffs, as the trustees of the Natural Resources of this State, also seek costs and Natural Resource Damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the Discharge of Hazardous Substances at the Property.

13. Plaintiffs maintain that the costs and Natural Resource Damages the Plaintiffs allegedly have incurred and will incur, for the Site are "Cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

14. On May 13, 1977, Syncon and Farnow filed a joint chapter 11 bankruptcy petition. On July 25, 1996, the bankruptcy court entered an order that permitted the trustee to abandon the Property because it was burdensome and its value was inconsequential. On August 16, 1996, the trustee was discharged and the converted chapter 7 case was closed. On February 18, 2005, default judgments were entered in the within matter against Farnow and Syncon for \$6,150,673.

15. The parties to this Consent Judgment ("the Parties") recognize, and the Court by entering this Consent Judgment finds, that the Parties have negotiated this Consent Judgment in good faith, that the implementation of this Consent Judgment will avoid continued, prolonged and complicated litigation among the Parties, that this Consent Judgment is fair, reasonable, and in the public interest, and that this Consent Judgment is a fair, appropriate, and adequately supported exercise of the Plaintiffs' discretion and judgment concerning the facts and circumstances of this matter.

**THEREFORE**, with the consent of the Parties, it is hereby **ORDERED and ADJUDGED**:

## II. JURISDICTION

16. This Court has jurisdiction over the subject matter of this action pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24. This Court also has personal jurisdiction over the Parties, solely for the purposes of this Consent Judgment and the underlying complaint. The Parties waive all objections and defenses they may have to jurisdiction of the Court, or to venue in this County. The Parties shall not challenge the Court's jurisdiction to enforce this Consent Judgment.

## III. PARTIES BOUND

17. Unless otherwise expressly provided, this Consent Judgment applies to, and is binding upon, Plaintiff DEP, Plaintiff Administrator and the Settling Defendant.

## IV. DEFINITIONS

18. Unless otherwise expressly provided by being defined below, terms used in this Consent Judgment that are defined in the Spill Act or in the regulations promulgated under the

Spill Act, shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Consent Judgment, the following definitions shall apply:

"Administrator" shall mean the Administrator of the New Jersey Spill Compensation Fund, who is appointed pursuant to N.J.S.A. 58:10-23.11j.

"American Home" shall mean American Home Assurance Company, Chartis Claims Inc., Chartis, Inc. and all of its member companies as well as their predecessors, successors, transferees, assignees, parents, subsidiaries, divisions, affiliates, holding companies, officers, directors, trustees, employees, shareholders, agents, attorneys, representatives, heirs, executors, administrators and estates.

"Consent Judgment" shall mean this Consent Judgment.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or State holiday. In computing time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State holiday, time shall run until the close of business of the next working day.

"DEP" shall mean the New Jersey Department of Environmental Protection and any successor department or agency of the State.

"Benjamin Farber" or "Settling Defendant" shall mean the individual Benjamin Farber, his spouse, and each of their past, present and future trustees, beneficiaries, estates, spouses, personal and legal representatives, agents, executors(ices), administrators(ices), conservators, heirs and assigns.

"Farnow" shall mean the entity presently or formerly known as Farnow, Inc., and shall also include its predecessors, successors and past, present and future officers, directors, employees, parents, subsidiaries, affiliates, shareholders, assigns, trustee in bankruptcy, or

receiver appointed pursuant to a proceeding in law or equity (in their capacity as such). Notwithstanding the foregoing, Farnow shall not include any Person that is first acquired by, first acquires or first merges into Farnow, Inc. (as constituted on the Effective Date) after the Effective Date other than with respect to claims against such Person arising from or relating to acts, omissions or liabilities of Farnow as constituted on or before the Effective Date.

"Future Cleanup and Removal Costs" shall mean all Cleanup and removal costs that the Plaintiffs will incur, after the effective date of this Consent Judgment in connection with the Site.

"Insurers" shall mean the American Home, the Allstate Insurance Company, Fireman's Fund Insurance Company, the American Insurance Company, The Travelers Indemnity Company, and St. Paul Fire and Marine Insurance Company and i) each of their respective present and future, direct and indirect parents, subsidiaries, partners, joint ventures, and those affiliates listed on Appendix A; ii) the past, direct and indirect parents, subsidiaries, partners, joint ventures and affiliates of any of the foregoing but only if one or more of the entities described above has the power or authority to act on such entity's behalf; iii) the past, present and future officers, directors, employees, representatives, agents, members, principals, attorneys and shareholders of any of the foregoing but only in their capacity as such; and iv) the predecessors, successors and assigns of any of the foregoing.

"Interest" shall mean interest at the rate established by R. 4:42 of the then current edition of the New Jersey Court Rules.

"Natural Resource Damages" shall mean all claims arising from discharges at or from the Property, that occurred prior to the effective date of this Consent Judgment, and that are recoverable by the Plaintiffs as natural resource damages for injuries to natural resources under the Spill Act; the Water Pollution Control Act; the Oil Pollution Act, 33 U.S.C.A. §§ 2701 to -

2761; the Clean Water Act, 33 U.S.C.A. §§ 1251 to -1387; the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C.A. §§ 9601 to -9675; or any other state or federal common law, statute, or regulation, and include:

a. The costs of assessing injury to natural resources and natural resource values and services, Plaintiff DEP's Office of Natural Resource Restoration's oversight costs determined pursuant to N.J.A.C. 7:26C-4.5, attorney's fees, consultants' and experts' fees, and other litigation costs; and

b. Compensation for restoration of, the lost value of, injury to, or destruction of Natural Resources and natural resource services.

Notwithstanding anything to the contrary above, Natural Resource Damages do not include claims arising from Discharges of Hazardous Substances resulting from operations of the Settling Defendant, Farnow or Syncon that are performed after the Effective Date. Natural Resource Damages also do not include compliance with any statutory or regulatory requirement that is not within the definition of Natural Resource Damages.

"Paragraph" shall mean a portion of this Consent Judgment identified by an Arabic numeral.

"Party," or "Parties" shall mean Plaintiff DEP, Plaintiff Administrator and the Settling Defendant.

"Past Cleanup and Removal Costs" shall mean all Cleanup and removal costs incurred by Plaintiffs on or before the effective date of this Consent Judgment in connection with the Site.

"Plaintiffs" shall mean Plaintiffs DEP, Administrator, and any successor department, agency or official.



"Person" shall mean public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, individuals, the United States, the State of New Jersey and any of its political subdivisions or agents.

"Property" shall mean the approximately 15 acres of real property located at 77-89 Jacobus Avenue in the Town of Kearny, Hudson County, New Jersey, this property being also known and designated as Block 289, Lots 12, 13 and 13R on the Kearny Tax Map. Plaintiff DEP has designated the Property as Site Remediation Program Interest No. 019804.

"Released Parties" shall mean the Settling Defendant, the Insurers, Farnow and Syncon.

"Section" shall mean a portion of this Consent Judgment identified by a roman numeral.

"Site" shall mean the Property and any and all areas or locations to which any Hazardous Substance(s) Discharged at or from the Property may have migrated or come to be located, including but not limited to the waters and sediments of the Passaic River and Newark Bay.

"Spill Fund" shall mean the New Jersey Spill Compensation Fund established pursuant to N.J.S.A. 58:10-23.11i.

"State" shall mean the State of New Jersey.

"Syncon" shall mean the entity presently or formerly known as Syncon Resins, Inc., and shall also include its predecessors, successors and past, present and future officers, directors, employees, parents, subsidiaries, affiliates, shareholders, assigns, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity (in their capacity as such). Notwithstanding the foregoing, Syncon shall not include any Person that is first acquired by, first acquires or first merges into Syncon Resins, Inc. (as constituted on the Effective Date) after the Effective Date other than with respect to claims against such Person arising from or relating to acts, omissions or liabilities of Syncon as constituted on or before the Effective Date.

## V. PARTIES' OBJECTIVES

19. The Parties' objectives in entering into this Consent Judgment are:

a. To reach a final settlement among the Parties with respect to the relief sought in the Complaint that allows the Settling Defendant to provide valuable consideration to Plaintiffs to resolve the Settling Defendant's alleged civil liability for Past and Future Cleanup and Removal Costs, including Natural Resource Damages, thereby reducing litigation related to the Property.

b. To resolve the Settling Defendant's liability with respect to or in connection with the Site at a time and in a manner that appropriately will reduce transaction costs for the Settling Defendant and the Plaintiffs.

c. To protect public health and safety and the environment by the Settling Defendant agreeing to reimburse Plaintiffs for an appropriate amount of Past and Future Cleanup and Removal Costs, including Natural Resource Damages, and in consideration of the Settling Defendant's inability or limited ability to pay Past and Future Cleanup and Removal Costs and other facts and circumstances allegedly limiting the availability of funds and the potential liability of the Settling Defendant, in return for Plaintiffs agreeing to resolve all their claims against the Settling Defendant concerning the Site as stated in the Complaint and this Consent Judgment.

d. To obtain a settlement with the Settling Defendant concerning his potential liability to the Plaintiffs for Past and Future Cleanup and Removal Costs, including Natural Resources Damages, as a result of the alleged Discharge of Hazardous Substances by the Settling Defendant, and to provide a release to the Insurers with respect thereto for any claims

Plaintiffs have asserted or could have asserted against the Insurers with respect thereto, directly or indirectly, whether as a judgment creditor or otherwise.

#### VI. THE SETTLING DEFENDANT'S COMMITMENTS

20. Within 60 days after the Effective Date of this Consent Judgment, the Settling Defendant shall pay Plaintiffs \$5,000,000 in reimbursement of Past Cleanup and Removal Costs, Future Cleanup and Removal Costs including Natural Resource Damages (hereinafter, the "Settlement Amount").

21. The Settling Defendant shall pay the amount specified in Paragraph 20 above by certified check made payable to the "Treasurer, State of New Jersey." The Settling Defendant shall mail or otherwise deliver the payment to the Section Chief, Environmental Enforcement Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

22. The Plaintiffs shall hold the Settlement Amount in escrow until the time to appeal the entry of the Consent Judgment has expired without an appeal being filed or, assuming an appeal has been filed, the entry of the Consent Judgment has been affirmed by the highest court to which the entry of the Consent Judgment was appealed. The escrow and appeal provisions in this paragraph are being provided because of unique facts presented by this litigation and the parties to that litigation. It is not the normal practice of the Plaintiffs to provide appeal provisions or hold settlement monies in escrow.

#### VII. PLAINTIFFS' COVENANTS

23. In consideration of the payment the Settling Defendant is making pursuant to Paragraph 20 above, and except as otherwise provided in Paragraphs 27 through 29 below, Plaintiffs fully and forever release, covenant not to further sue, and agree not to otherwise take

any administrative action against the Released Parties for reimbursement of Past Cleanup and Removal Costs and for Future Cleanup and Removal Costs, and for all costs of “response,” as that term is defined by CERCLA § 101 (25), 42 U.S.C. § 9601 (25), Plaintiffs have incurred or will incur for the Site, and for any injunctive relief with respect to the Site. Plaintiffs agree that this release and covenant not to sue includes any and all actual or alleged rights of Plaintiffs against the Released Parties concerning the allegations contained in the Complaint and/or any policy of insurance issued or allegedly issued by the Insurers to the Settling Defendant, directly or indirectly, whether as judgment creditor or otherwise. Plaintiffs represent that they have not assigned any of the rights referenced in this Paragraph to any other person or entity, and will not attempt to do so.

24. In further consideration of the payment the Settling Defendant is making pursuant to Paragraph 20 above, and except as otherwise provided in Paragraphs 27 through 29 below, Plaintiffs fully and forever release, covenant not to sue, and agree not to otherwise take administrative action against the Released Parties for any and all of Plaintiffs’ causes of actions for Natural Resource Damages for the Site. Plaintiffs agree that this release and covenant not to sue includes any and all actual or alleged rights of Plaintiffs against the Released Parties for Natural Resource Damages and/or any policy of insurance issued or allegedly issued by the Insurers to Settling Defendant, directly or indirectly, whether as judgment creditor or otherwise. Plaintiffs represent that they have not assigned any of the rights referenced in this Paragraph to any other person or entity, and will not attempt to do so.

25. The covenants and release contained in Paragraph 23 above, and the covenants and release contained in Paragraph 24 above, shall take effect upon Plaintiffs receiving the

payment the Settling Defendant is required to make pursuant to Paragraph 20 above, in full, and in the prescribed time and manner.

26. The covenants and releases contained in Paragraphs 23 and 24 above, are further conditioned upon the Settling Defendant's satisfactory performance of his obligations under Paragraphs 20 and 21 of this Consent Judgment, and extends to the Released Parties and not to any other persons.

#### VIII. PLAINTIFFS' RESERVATIONS

27. Notwithstanding any other provision of this Consent Judgment, the covenant and release contained in Paragraphs 23 and 24 above shall be null and void in the event that the Settling Defendant fails to pay the Settlement Amount in accordance with Section VI.

28. Notwithstanding any other provision of this Consent Judgment, Plaintiffs retain all authority, and reserve all rights, to undertake any remediation authorized by law concerning the Site.

29. The covenant and release contained in Paragraphs 23 and 24 above do not pertain to any matters other than those expressly stated, including any release or discharge at or from any property other than the Site. Plaintiffs reserve, and this Consent Judgment is without prejudice to, all rights against the Released Parties concerning all other matters, including the following:

- a. claims based on the Settling Defendant's failure to satisfy any term or provision of this Consent Judgment;
- b. liability arising from the Settling Defendant's past, present or future Discharge or unsatisfactory storage or containment of any Hazardous Substance outside the Site;

c. liability for any future discharge or unsatisfactory storage or containment of any Hazardous substance by the Settling Defendant at the Property, unless as otherwise ordered or approved by plaintiff DEP; provided, however, that the terms “discharge, storage or containment” are not meant to include the continuing migration of Hazardous substances discharged at or from the Property prior to the Effective Date of this Consent Judgment.

d. criminal liability;

e. liability for any violation by the Settling Defendant of federal or state law, that occurs during or after the remediation of the Site; and

f. liability for any claim pending or filed on or after the Effective Date of this Consent Judgment against the Spill Fund concerning the Property.

#### IX. THE SETTLING DEFENDANT’S COVENANTS

30. The Settling Defendant covenants not to oppose entry of this Consent Judgment by this Court, or to challenge any provision of this Consent Judgment, unless Plaintiffs notify the Settling Defendant, in writing, that they no longer support entry of the Consent Judgment.

31. The Settling Defendant further covenants, subject to Paragraph 32 below, not to sue or assert any claim or cause of action against the State, including any department, agency or instrumentality of the State, concerning the Site. This covenant shall include the following:

a. any direct or indirect claim for reimbursement from the Spill Fund or the Sanitary Landfill Contingency Fund concerning the Site;

b. any claim for fees or damages related to the litigation of the within matter, including any fees allowed by the Order of this Court dated December 1, 2006; and

c. any claim or cause of action concerning the remediation of the

Site, including Plaintiff DEP's selection, performance or oversight of the remediation, or Plaintiff DEP's approval of the plans for the remediation.

#### X. SETTLING DEFENDANT'S RESERVATIONS

32. The Settling Defendant reserves, and this Consent Judgment is without prejudice to, claims against the State of New Jersey, subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to -12-3; the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 to 13-10; the New Jersey Constitution, N.J. Const. art. VIII, §2, ¶2; or any other applicable provision of law, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any State employee while acting within the scope of his office or employment under circumstances where the State, if a private person, would be liable to the claimant. Any such claim, however, shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined in N.J.S.A. 59:1-3; nor shall any such claim include a claim based on Plaintiff DEP's selection and performance of the remediation. The foregoing applies only to claims that the Settling Defendant may bring pursuant to any statute other than the Spill Act, and for which the waiver of sovereign immunity is found in a statute other than the Spill Act.

33. Nothing in this Consent Judgment shall be deemed to constitute preauthorization of a claim against the Spill Fund within the meaning of N.J.S.A. 58:10-23.11k. or N.J.A.C. 7:1J.

#### XI. FINDINGS & NO ADMISSIONS OF LIABILITY

34. Nothing contained in this Consent Judgment shall be considered an admission by the Settling Defendant, or a finding by Plaintiffs DEP and Administrator, of any wrongdoing or liability on Settling Defendant's part for anything the Plaintiffs have actual knowledge of having

occurred at the Site as of the effective date of this Consent Judgment, or an admission by the Released Parties that any Released Party was obligated to provide insurance coverage and/or pay any monies with respect to any of the claims asserted by the Plaintiffs.

## XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

35. Except as otherwise stated herein, nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Judgment. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Judgment may have under applicable law.

36. Except as otherwise stated herein, the Settling Defendant expressly reserves all rights, including, but not limited to, any right to cost recovery, contribution, defenses, claims, demands, and causes of action that the Settling Defendant may have concerning any matter, transaction, or occurrence concerning the Site against any person not a Party to this Consent Judgment.

37. When entered, this Consent Judgment will constitute a judicially approved settlement within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) and 42 U.S.C.A. § 9613(f)(2) for the purpose of providing protection to the Released Parties from contribution actions. The Parties agree, and by entering this Consent Judgment this Court finds, the Released Parties are entitled, upon payment of the Settlement Amount by the Settling Defendant pursuant to this Consent Judgment, to protection from contribution actions or claims for matters addressed in this Consent Judgment to the fullest extent permitted under the law, including but not limited to contribution action or claims under Sections 106, 107 or 113 of CERCLA, 42 U.S.C. §9606, 9607, or 9613, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq., and/or any other federal, state or local statute, regulation, rule, ordinance, law or common



law, as the same may be amended or superseded. For the purposes of this Consent Judgment, “matters addressed” shall mean Past Cleanup and Removal Costs, Future Cleanup and Removal Costs, Natural Resource Damages for the Site and all costs of “response,” as that term is defined by CERCLA § 101(25), 42 U.S.C. § 9601 (25).

38. In order for the Released Parties to obtain protection under N.J.S.A. 58:10-23.11.f.b. from contribution claims concerning the matters addressed in this Consent Judgment the Plaintiffs published notice of this Consent Judgment in the New Jersey Register and on Plaintiff DEP's website on April 1, 2013, in accordance with N.J.S.A. 58:10-23.11e.2. Such notice included the following information:

- a. the caption of this case;
- b. the name and location of the Property;
- c. the name of the Settling Defendant; and
- d. A summary of the terms of this Consent Judgment.

39. Settling Defendant also published legal notices in three newspapers of general circulation in the area of the Property for a period of not less than three days which contained the following information:

- a. The name and location of the Property;
- b. The parties to this Consent Judgment;
- c. A summary of the terms of this Consent Judgment; and
- d. The date that public notice was published in the New Jersey Register.

40. The Plaintiffs, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Consent Judgment to all other potentially responsible parties for Discharges at the Property of whom the Plaintiffs had notice as of the date the Plaintiffs published notice of the

proposed settlement in this matter in the New Jersey Register in accordance with Paragraph 38 above.

41. The Plaintiffs will submit this Consent Judgment to the Court for entry pursuant to Paragraph 62 below unless, as a result of the notice of this Consent Judgment pursuant to Paragraphs 38 and 39 above, the Plaintiffs receive information that disclose facts or considerations that indicate to them, in their sole discretion, that the Consent Judgment is inappropriate, improper or inadequate.

42. In any subsequent administrative or judicial proceeding initiated by Plaintiffs for injunctive relief, recovery of costs and damages, or other appropriate relief concerning the Site, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine or other defenses based upon any contention that the claims Plaintiffs raise in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants set forth in this Consent Judgment.

### XIII. GENERAL PROVISIONS

43. Site Access - In addition to plaintiff DEP's statutory and regulatory authority to enter and inspect the Property, the Settling Defendant shall allow plaintiff DEP and its authorized representatives access to all areas of the Property owned by the Settling Defendant in order to:

- a. remediate the Site;
- b. assess, restore or replace, or oversee the assessment, restoration or replacement of, any natural resource and natural resource service of this

State injured by the Discharge of Hazardous substances at the Property;  
and

- c. conduct any other action deemed appropriate by Plaintiffs concerning  
Hazardous substances at the Property.

44. The Settling Defendant shall ensure that any sale or transfer of the Property is conditioned upon Plaintiff DEP and its authorized representatives having continuing access for the purposes stated in Paragraph 43 above.

45. Plaintiffs enter into this Consent Judgment pursuant to the police powers of the State of New Jersey for the enforcement of the laws of the State and the protection of the public health and safety and the environment. All obligations imposed upon the Settling Defendant by this Consent Judgment are continuing regulatory obligations pursuant to these police powers.

46. No payment owed or made pursuant to this Consent Judgment is intended to constitute a debt, damage claim, penalty or other claim that may be limited or discharged in a bankruptcy proceeding.

#### XIV. ACCESS TO INFORMATION

47. Upon receipt of a written request by one or more of the Plaintiffs, the Settling Defendant shall submit or make available to the Plaintiffs all information the Settling Defendant has concerning the Site, including technical records and contractual documents.

48. The Settling Defendant may assert a claim of confidentiality or privilege for any information submitted to the Plaintiffs pursuant to this Consent Judgment. The Settling Defendant, however, agrees not to assert any privilege or confidentiality claim concerning data related to Site conditions, sampling, or monitoring.

## XV. RETENTION OF RECORDS

49. The Settling Defendant shall preserve during the pendency of this Consent Judgment and for a minimum of 7 years after its effective date, all data and information, including technical records, potential evidentiary documentation and contractual documents, in Settling Defendant's possession or in the possession of his employees, agents, accountants, contractors, or attorneys, which in any way concern the Site, despite any document retention policy to the contrary.

50. After the 7-year period specified in Paragraph 49 above, the Settling Defendant may request of Plaintiff DEP, in writing, that he be allowed to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receiving written approval from Plaintiff DEP, the Settling Defendant may discard only those documents the Plaintiffs do not require the Settling Defendant to preserve for a longer period.

## XVI. NOTICES AND SUBMISSIONS

51. Except as otherwise provided in this Consent Judgment, whenever written notice or other documents are required to be submitted by one Party to another, they shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing.

As to Plaintiffs DEP & Administrator:

Section Chief  
Environmental Enforcement Section  
Department of Law & Public Safety  
Division of Law  
Richard J. Hughes Justice Complex  
P.O. Box 093

Trenton, New Jersey 08625-0093  
609-292-6945

As to Settling Defendant:

David P. Schneider, Esq.  
Bressler, Amery & Ross, P.C.  
325 Columbia Turnpike  
Florham Park, NJ 07932

52. All submissions shall be considered effective upon receipt, unless otherwise provided in this Consent Judgment.

53. The Settling Defendant shall not construe any informal advice, guidance, suggestions, or comments by Plaintiffs or by persons acting for Plaintiffs as relieving the Settling Defendant of his obligation to obtain written approvals or modifications as required by this Consent Judgment.

#### XVII. EFFECTIVE DATE

54. The effective date of this Consent Judgment shall be the date upon which the Court in the Complaint has entered this Consent Judgment. In the event the entry of the Consent Judgment is reversed on appeal following payment by the Settling Defendant of the Settlement Amount in accordance with Paragraphs 20 and 21 above, the Plaintiffs agree to refund the Settlement Amount to the representative of Settling Defendant identified in Paragraph 51 above. In the event the Settlement Amount is returned to the representative of the Settling Defendant pursuant to this Paragraph, the within Consent Judgment shall be null and void.

#### XVIII. RETENTION OF JURISDICTION

55. Upon entry of the Consent Judgment, all claims asserted by Plaintiffs in this matter against Settling Defendant are dismissed with prejudice and Plaintiffs agree to take no

further action on the judgment defaults they obtained against Farnow and Syncon, except that this Court retains jurisdiction over both the subject matter of this Consent Judgment and the Parties for the duration of the performance of the terms and provisions of this Consent Judgment for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Judgment, or to effectuate or enforce compliance with its terms, or to resolve disputes, including any appeal from an administrative determination of a dispute between the parties.

#### XIX. MODIFICATION

56. This Consent Judgment represents the entire integrated agreement between Plaintiffs and the Settling Defendant concerning the Site, and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided.

57. Any notices or other documents specified in this Consent Judgment may only be modified by agreement of the Parties and the Insurers. All such modifications shall be made in writing.

58. All notices or other documents the Settling Defendant is required to submit to the Plaintiffs under this Consent Judgment, if any, shall, upon approval or modification by Plaintiff DEP or Plaintiff Administrator, be enforceable under this Consent Judgment. All such approvals or modifications shall be in writing.

59. In the event Plaintiffs approve or modify a portion of a notice or other document the Settling Defendant is required to submit under this Consent Judgment, if any, the approved or modified portion shall be enforceable under this Consent Judgment.

60. Nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Judgment.

#### XX. ENTRY OF THIS CONSENT DECREE

61. The Settling Defendant consents to the entry of this Consent Judgment without further notice.

62. Upon conclusion of the 30-day public comment period specified in Paragraph 38 above, the Plaintiffs shall promptly submit this Consent Judgment to the Court for entry.

63. If for any reason the Court should decline to approve this Consent Judgment in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### XXI. SIGNATORIES/SERVICE

64. Each undersigned representative of a Party to this Consent Judgment certifies that he or she is authorized to enter into the terms and conditions of this Consent Judgment, and to execute and legally bind such party to this Consent Judgment.

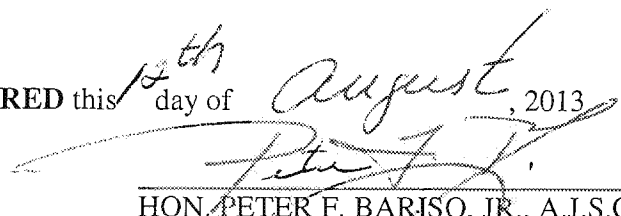
65. This Consent Judgment may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Consent Judgment.

66. The Settling Defendant shall identify on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on his behalf with respect to all matters arising under or relating to this Consent Judgment. The Settling Defendant agrees to accept service in this manner, and to waive the formal service requirements set forth in R. 4:4-4, including service of a summons.

XXII. APPENDIX

67. The following appendix is attached to and incorporated into this Consent Judgment:

“Appendix A” is a list of all the affiliates of the Insurers.

SO ORDERED this 12<sup>th</sup> day of August, 2013.  
  
\_\_\_\_\_  
HON. PETER F. BARISO, JR., A.J.S.C.



NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By:

\_\_\_\_\_  
KEVIN KRATINA  
Assistant Director, Enforcement and  
Information Support Element

Dated:

NEW JERSEY SPILL COMPENSATION  
FUND

By:

\_\_\_\_\_  
ANTHONY J. FARRO  
Administrator  
New Jersey Spill Compensation Fund

Dated:

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

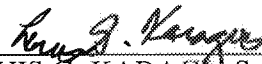
By:

\_\_\_\_\_  
RICH BOORNAZIAN  
Assistant Commissioner, Natural & Historic  
Resources

Dated:

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF  
NEW JERSEY

By:

  
\_\_\_\_\_  
LOUIS G. KARAGAS  
Deputy Attorney General

Dated: *August 6, 2013*

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: 

KEVIN KRATINA  
Assistant Director, Enforcement and  
Information Support Element

Dated: 6/14/13

NEW JERSEY SPILL COMPENSATION  
FUND

By: 

ANTHONY J. FARRO  
Administrator  
New Jersey Spill Compensation Fund

Dated: 6/14/13

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_

RICH BOORNAZIAN  
Assistant Commissioner, Natural & Historic  
Resources

Dated: \_\_\_\_\_

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW  
JERSEY

By: \_\_\_\_\_

LOUIS G. KARAGIAS  
Deputy Attorney General

Dated: \_\_\_\_\_

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By:

\_\_\_\_\_  
KEVIN KRATINA  
Assistant Director, Enforcement and  
Information Support Element

Dated:

NEW JERSEY SPILL COMPENSATION  
FUND


By:

\_\_\_\_\_  
ANTHONY J. FARRO  
Administrator  
New Jersey Spill Compensation Fund

Dated:

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By:

  
\_\_\_\_\_  
RICH BOORNAZIAN  
Assistant Commissioner, Natural & Historic  
Resources

Dated: 6/14/13

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW  
JERSEY

By:

\_\_\_\_\_  
LOUIS G. KARAGIAS  
Deputy Attorney General

Dated:

BRESSLER, AMERY & ROSS, P.C.  
Attorneys at Law

By:   
DAVID P. SCHNEIDER, ESQ.  
Attorney for Benjamin Farber

Dated: 7/31/13

Person Authorized to Accept Service on Behalf of Benjamin Farber:

Name: David P. Schneider, Esq.

Title: Attorney for Benjamin Farber

Address: Bressler, Amery & Ross  
325 Columbia Turnpike  
Florham Park, NJ 07932

Telephone No.: 973- 514-1200

Appendix A  
(Insurers' Affiliates)

SCHEDULE Y - INFORMATION CONCERNING ACTIVITIES OF INSURER MEMBERS OF A HOLDING COMPANY GROUP  
PART 1 - ORGANIZATIONAL CHART

Notes:  
 \* Denotes affiliated insurer  
 Unless otherwise stated, subsidiaries listed above are 100% owned by respective parent

THE TRAVELERS INDEMNITY COMPANY

SCHEDULE Y - INFORMATION CONCERNING ACTIVITIES OF INSURER MEMBERS OF A HOLDING COMPANY GROUP  
PART 1 - ORGANIZATIONAL CHART

Travelers Brazil Acquisition LLC	Delaware	06-0907370	TINDY Foreign, Inc.	Delaware	20-4403403
... J. Malucelli Participações em Seguros e Resseguros S.A. ("Holdco") (43.4%)	Brazil		Travelers Commercial Casualty Company (40282)	Connecticut	95-3634110
... J. Malucelli Resseguradora S.A.*	Brazil		Travelers Distribution Alliance, Inc.	Delaware	62-1657094
... J. Malucelli Controle de Riscos Ltda. (0.01%)	Brazil		Travelers TLD, LLC	Delaware	06-0566050
J. Malucelli Seguradora S.A.*	Brazil		The Travelers Home and Marine Insurance Company (27998)*	Connecticut	35-1838079
J. Malucelli Seguradora S.A.*	Brazil		The Travelers Lloyds Insurance Company (41262)*	Texas	76-0002592
J. Malucelli Seguradora S.A.*	Brazil		Travelers Marine, LLC	Delaware	06-0566050
J. Malucelli Seguros S.A.*	Brazil				
Travelers Casualty Insurance Company of America (19046)*	Connecticut	06-0876835			
... Travelers Casualty Company of Connecticut (36170)*	Connecticut	06-1286266			
... Travelers Casualty UK Investments, LLC	Delaware	06-6033504			
Travelers Commercial Insurance Company (26137)*	Connecticut	06-1286268			
Travelers Excess and Surplus Lines Company (26696)*	Connecticut	06-1203698			
Travelers Lloyds of Texas Insurance Company (41564)*	Texas	75-1732040			
Travelers MGA, Inc.	Texas	75-2676034			
The Travelers Indemnity Company (25658)*	Connecticut	06-0566050			
Arch Street North LLC	Delaware	06-0566050			
The Charter Oak Fire Insurance Company (25615)	Connecticut	06-0291290			
Countersignature Agency, Inc.	Florida	06-1345091			
First Floridian Auto and Home Insurance Company (10647)	Florida	59-3372141			
... First Travelers Indemnity Company (29930)*	Connecticut	22-3129711			
Gulf Underwriters Insurance Company (42811)*	Connecticut	56-1371361			
Select Insurance Company (22233)*	Texas	75-6013697			
... Giff Underwriting Limited*	United Kingdom				
Travelers Casualty and Surety Company of Europe, Limited	United Kingdom	75-1679830			
Commercial Guaranty Insurance Company (38385)*	Delaware	06-0566050			
... Cysta Brook, LLC	Delaware	06-0566050			
... Durham Holding, LLC	Delaware	06-0566050			
Sunco Holdings, LLC	Delaware	06-0566050			
... Coda Limited, LLC	Delaware	06-0566050			
Arrowhead Company, LLC	Delaware	06-0566050			
Eastern Asset, LLC	Delaware	06-0566050			
Jupiter Holdings, Inc.	Minnesota	41-1769846			
... American Equity Insurance Company (43117)*	Arizona	86-0703220			
... American Equity Specialty Insurance Company (10819)*	Connecticut	86-0868106			
Northland Insurance Company (24015)*	Connecticut	41-6009967			
Northfield Insurance Company (27987)*	Iowa	41-0983992			
Northland Casualty Company (24031)	Connecticut	94-6051964			
Northland Risk Management Services, Inc.	Minnesota	41-1720288			
Travelers Indemnity UK Investments LLC	Connecticut	06-0566050			
TPC U.K. Investments LLC	Delaware	06-0566050			
... The Phoenix Insurance Company (25623)*	Connecticut	06-0303275			
... The Travelers Indemnity Company of America (25666)*	Connecticut	58-6020487			
... The Travelers Indemnity Company of Connecticut (25682)*	Connecticut	06-0336212			
... Travelers Property Casualty Company of America (25674)*	Connecticut	36-2719165			
... Constitution State Services, LLC	Delaware	06-1501229			
... Phoenix UK Investments LLC	Delaware	06-0303275			
The Premier Insurance Company of Massachusetts (12850)*	Massachusetts	04-3175569			
TimCo Insurance Company (28988)	Connecticut	35-1838077			

Notes:

\* Denotes affiliated insurer

Unless otherwise stated, subsidiaries listed above are 100% owned by respective parent

Allstate affiliates are:

Northbrook Excess and Surplus

Northbrook Insurance Company

Allstate Insurance Company



Fireman's Fund affiliates are:

American Automobile Insurance Company  
American Standard Lloyds Insurance Co.  
Associated Indemnity Corporation  
Chicago Insurance Company  
Fireman's Fund County Mutual Insurance Co.  
Fireman's Fund Financial Services, LLC  
Fireman's Fund Indemnity Corporation  
Fireman's Fund Insurance Company of Hawaii, Inc.  
Fireman's Fund Insurance Company of Louisiana  
Fireman's Fund Insurance Company of Ohio  
International Film Guarantors, LLC  
International Film Guarantors, Ltd.  
Interstate Fire & Casualty Company  
Life Sales, LLC  
National Surety Corporation  
Par Holdings LTD  
San Francisco Reinsurance Company  
Standard General Agency, Inc.  
The American Insurance Company  
Vintage Insurance Company

## CHARTIS U.S. COMPANIES

### INSURANCE COMPANIES

#### ADMITTED COMPANIES

American Home Assurance Company  
Audubon Insurance Company  
Chartis Casualty Company<sup>1</sup>  
Chartis Property Casualty Company<sup>2</sup>  
Commerce and Industry Insurance Company  
Granite State Insurance Company  
Illinois National Insurance Co.  
National Union Fire Insurance Company of Louisiana  
National Union Fire Insurance Company of Pittsburgh, Pa.  
New Hampshire Insurance Company  
The Insurance Company of the State of Pennsylvania

#### NON-ADMITTED COMPANIES

Audubon Indemnity Company  
Chartis Select Insurance Company<sup>3</sup>  
Chartis Specialty Insurance Company<sup>4</sup>

---

<sup>1</sup> Formerly known as American International South Insurance Company.

<sup>2</sup> Formerly known as AIG Casualty Company.

<sup>3</sup> Formerly known as AIG Excess Liability Insurance Company Ltd. A Chartis email dated January 18, 2012 states:

Effective January 1, 2012, Chartis Select Insurance Company was merged with and into Lexington Insurance Company (Lexington). Lexington is the surviving company and has assumed all of the existing obligations of Chartis Select. Lexington's NAIC number, FEIN number, state licenses, statutory and administrative addresses and directors and officers are not affected by the merger.

<sup>4</sup> Formerly known as American International Specialty Lines.

Landmark Insurance Company<sup>5</sup>  
Lexington Insurance Company

**CANADA**

Chartis Insurance Company of Canada<sup>6</sup>

**IRELAND**

Chartis Excess Limited<sup>7</sup>

**OTHER**

National Union Fire Insurance Company of Vermont

**NON-INSURANCE COMPANIES**

**RISK SPECIALIST COMPANIES**

A.I. Risk Specialists Insurance, Inc.  
Risk Specialists Companies, Inc.  
Risk Specialists Companies Insurance Agency, Inc.  
Risk Specialists Company (Bermuda), Ltd.  
Risk Specialists Company of Kentucky, Inc.  
Risk Specialists Company of Tennessee, Inc.

**HEALTHCARE**

Medical Excess Insurance Services, Inc.  
Medical Excess, LLC

**WARRANTY**

AIG WarrantyGuard, Inc.  
AIG Warranty Services and Insurance Agency, Inc.

---

<sup>5</sup> Landmark Insurance Company is licensed as an admitted company in Arizona, California, Colorado, Hawaii, Kansas, Massachusetts, Nevada, New York, Oregon and Washington. A Chartis email dated January 18, 2012 states:

Effective January 1, 2012, Landmark Insurance Company was merged with and into National Union fire Insurance Company of Pittsburgh, PA (NUFIC). NUFIC is the surviving company and has assumed all of the existing obligations of Landmark. NUFIC's NAIC number, FEIN number, state licenses, statutory and administrative addresses and directors and officers are not affected by the merger.

<sup>6</sup> Formerly known as AIG Commercial Insurance Company of Canada.

<sup>7</sup> Formerly known as AIG Excess Liability Insurance International Limited.

AIG Warrantly Services Company of Canada  
AIG Warrantly Services of Florida, Inc.

### **CLAIMS**

AIG Claims Services of Nevada, Inc.  
Chartis Claims, Inc.<sup>8</sup>  
Chartis Global Investigations, Inc.<sup>9</sup>  
Chartis Marine Adjusters, Inc.<sup>10</sup>  
DirectDME, Inc.  
Global Loss Prevention, Inc.<sup>11</sup>  
Health Direct, Inc.

### **AVIATION**

Chartis Aerospace Insurance Services, Inc.<sup>12</sup>  
Chartis Aerospace Adjustment Services, Inc.<sup>13</sup>  
AIG Aviation (Canada), Inc.  
AIG Aviation (Illinois) Corporation  
AIG Aviation (New York), Inc.  
AIG Aviation (Texas), Inc.<sup>14</sup>

### **OTHER**

A.I. Risk Sports Purchasing Group, Inc.  
Alabaster Capital LLC

---

<sup>8</sup> Formerly known as AIG Domestic Claims, Inc.

<sup>9</sup> Formerly known as AIG World Investigative Resources, Inc .

<sup>10</sup> Formerly known as AI Marine Adjusters, Inc.

<sup>11</sup> Formerly known as AIG Consultants, Inc.

<sup>12</sup> Formerly known as AIG Aviation, Inc.

<sup>13</sup> Formerly known as AIG Adjustment Services, Inc.

<sup>14</sup> Formerly known as AIG Life Asset Purchase LLC.

Agency Management Corporation  
Akita, Inc.  
Chartis CapEx, Inc.  
Chartis Inc.<sup>15</sup>  
Chartis Insurance Agency, Inc.<sup>16</sup>  
Chartis U.S., Inc.<sup>17</sup>  
Design Professionals Association Risk Purchasing Group, Inc.  
Fieldstone Securitization I LLC  
Graphite Management LLC<sup>18</sup>  
Lavastone Capital LLC<sup>19</sup>  
Morefar Marketing, Inc.  
New Hampshire Insurance Services, Inc.  
Quartz Holdings LLC<sup>20</sup>  
Slate Capital LLC<sup>21</sup>  
The Gulf Agency, Inc.

---

<sup>15</sup> Formerly known as AIU Holdings, Inc.

<sup>16</sup> Formerly known as AIG Commercial Insurance Agency, Inc.

<sup>17</sup> Formerly known as AIG Commercial Insurance Group.

<sup>18</sup> Formerly known as AIG LS Holdings LLC.

<sup>19</sup> Formerly known as AIG Life Settlements LLC.

<sup>20</sup> Formerly known as LSP Holdings LLC.

<sup>21</sup> Formerly known as A 100 LLC.